IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1560 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANSABEN GOVINDBHAI PARMAR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SUDHIR SHAH for Petitioner(s) : 1,MR SATYAM Y CHHAYA for Petitioner(s) : 1,
MR.MR MENGDE AGP for Respondent(s) : 1,
MR PV HATHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 13/09/2006

ORAL JUDGMENT

1.The short facts of the case are that the petitioner who was Sarpanch of Bhatia Gram Panchayat, was served with the Show Cause notice dated 08.08.2005 to the petitioner for removal under Section 57(1) of the

Gujarat Panchayat Act, 1993(hereinafter referred to as the 'Act') inter alia on the ground that the kits are given to the relatives who were not below poverty line (hereinafter referred to as 'B.P.L.'). The second ground was that no action was taken by the Sarpanch for recruitment of wireman and the action is not taken for removal of her husband as wireman. The third ground was that the work undertaken by the Gram Panchayat was of the lower quality and the fourth ground was that though Babul trees were cut by the people, the same was be shown as undertaken by the Gram Panchayat and, therefore, there is misconduct and misappropriation. The petitioner submitted reply and contended inter alia that the persons whose names are mentioned for distribution of the agricultural kits, are not the relatives of the petitioner and the husband of the petitioner who was serving as temporary wireman and was recruited prior to the election. It was also contended that the work of construction of Otta is in accordance with S.C.R. and for the fourth ground of the Show Cause notice, it was submitted that the Babul trees are cut by the Gram Panchayat by engaging labourers and, therefore, the work is in accordance with the rules.

2.It appears that the District Development Officer after

hearing both the sides, found that the petitioner has committed misuse of the position for taking action for recruitment of wireman and not releaving her husband as the wireman. It was also found by the District Development Officer that the agricultural kits are distributed to the persons, who are mentioned in the list of B.P.L. and as there is complaint that the persons are relatives of the Sarpanch, which shows the malafide intention of the Panchayat. It is found by the District Development Officer that the wood of the Babul trees which were cut is not credited in the accounts of the Panchayat and, therefore, there is no satisfactory explanation of the work which was undertaken by the Gram Panchayat and the same is without preparing the budget. Ultimately, the order was passed by the District Development Officer to remove the petitioenr from the post of Sarpanch.

3. The petitioner carried the matter before the Additional Development Commissioner who also found that the persons who had been distributed agricultural kits, having the name in the list of B.P.L. are favoured since they were the relatives of the Sarpanch and other members of the Gram Panchayat. The husband of the petitioner who was working as wireman was not holding

the license and it was required for the Gram Panchayat to take the process of recruitment by removing him, but no action is taken by the petitioner in capacity of the Sarpanch. It is also found by the Additional Development Commissioner that the wood which was cut of the Babul trees is not credited in the accounts of the Gram Panchayat and such details are also not produced before the District Development Officer and even for the work which was undertaken, there was no estimate prepared. Ultimately the Additional Development Commissioner found that there is misuse of power and, therefore, the appeal was dismissed. It is under these circumstances the petitioner has approached to this Court by preferring the petition.

4. Mr.Chhaya, learned counsel appearing for the petitioner raised the contention that in the show cause notice, the ground was that the money of the Gram Panchayat is misappropriated by showing the work as that of Panchayat, though the trees were cut by the villagers, whereas in the order, the authority has proceeded on the basis that the wood of Babul trees which was cut was not credited in the accounts of the Gram Panchayat. He submitted that such ground was not there in the show cause notice and, therefore, the order passed by the

authority is in breach of the principles of natural justice since no opportunity was given to the petitioner to show cause regarding the wood credited in the accounts of the Gram Panchayat.

5. Mr.Mehta, learned counsel appearing for the District Development Officer submitted that in view of the reply, the second aspect which was required to be examined by the authority was as to whether the wood is credited in the accounts of the Gram Panchayat or not and as no details are coming on record, the authorities were justified in concluding that the misconduct is committed.

6. It is true that the finding of the authority for not crediting of the wood in the accounts of the Gram Panchayat was not the allegation in the show cause notice and the allegation in the show cause notice was different than the finding recorded by the District Development Officer for misuse of the power of removal qua cutting of the Babul trees.

7. In the matter of observance of principles of natural justice, the law has developed further to the extent that if, unless the prejudice is demonstrated to the satisfaction of the Court, the Court may decline to exercise the power under Article 226/227 of the

Constitution. The reference may be made to the decision of this Court in case of Hindustan Finstock Ltd. V/s. Securities and Exchange Board of India reported in 2002(3) GLR 2565. It was not the case of the petitioner before the Appellant Authority, nor it is stated before this Court that the wood of Babul trees is accordingly credited in the accounts of the Gram Panchayat. During the course of hearing, Mr.Chhaya, learned counsel has shown the statement of the labours paid to the labourers by the Gram Panchayat of about Rs.15,000/- to 20,000/- for cutting of the Babul trees and, therefore, he contended that the amount is actually paid and, therefore, the ground in the show cause notice would not survive. However, Mr. Chhaya, learned counsel, upon the query of the Court is not in a position to make a positive statement before this Court on behalf of his client that the wood which was cut of Babul trees was credited or not ? It is not even pleaded by the petitioner. It may also be recorded that even before the Additional Development Commissioner though there was finding of the District Development Officer on this aspect, it was not even pleaded or stated by the petitioner that the wood was credited in the accounts of the Gram Panchayat, nor there is any pleading or

statement made in the present petition for such purpose. Under these circumstances, if the wood which was cut of the Babul trees, was not credited in the accounts of the Gram Panchayat and for such aspects, when no dispute is raised even by the petitioner in this petition nor the petitioner is in a position to explain the aforesaid aspects, I find that the authorities were justified in observing that as the wood is not credited in the accounts of the Gram Panchayat, the misconduct is committed. Therefore, in absence of any positive statement coming on record for crediting of the wood of Babul trees in the accounts of the Gram Panchayat, it cannot be said that any prejudice is caused. Therefore, I find that such a contention for upsetting the order passed by the authority which is confirmed by the Appellate Authority should not be entertained for exercising power by this Court under Articles 226/227 of the Constitution of India.

8. Mr.Chhaya, learned counsel appearing for the petitioner raised the another contention that so far as the other work of distribution of kits and of undertaking the construction work by the Gram Panchayat is concerned, the same was the decision of the Gram Panchayat the

body as a whole and, therefore, by relying upon the decision of this Court in case of Kamlaben Rohitbhai Patel V/s. Additional Development Commissioner Gandhinagar and Ors. reported in 2001(1) GLH 109 contended that the Sarpanch in his individual capacity cannot be made as responsible attracking the power of removal. He further submitted that so far as the grounds for not relieving the husband of the petitioner as wireman and for not recruiting another person in his place are concerned, the same was the situation prior to the petitioner was elected as the Sarpanch and, therefore, in his submission, the order of removal on such ground is illegal.

9. Even if the contention of the petitioner is accepted on the aspect that when the decision is taken by the body as a whole, the Sarpanch in individual capacity may not be made responsible in view of the decision taken by this Court in case of Kamlaben Rohitbhai Patel(Supra) and on the ground pertaining to non relieving of her husband, since he was there prior to her election and therefore, may not be considered for the purpose of removal, then also in my view when the order can be maintained in view of the misconduct committed for not crediting of the wood of the Babul trees in the

accounts of the Gram Panchayat which in the opinion of this Court can be said as a misconduct which may attract the power of removal, such other contentions raised on behalf of the petitioner would not lead to the situation of quashing of the final order of removal or consequently, restoration of the position as Sarpanch.

10. In view of the above, no relief can be granted to the petitioner as prayed. Rule is discharged. Considering the facts and circumstances of the case no order as to costs.

(JAYANT PATEL, J.)

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